

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

ALYSSA A. OUDIN,

Appellant.

DOCKET NUMBER WD74885

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 23, 2013

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Shane T. Alexander, Judge

JUDGES

Division Two: Newton, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
Evan J. Buchheim, Assistant Attorney General
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Attorneys for Respondent,

Laura G. Martin, District Defender
Kansas City, MO

Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
 Respondent,)
 v.) **OPINION FILED:**
) **July 23, 2013**
 ALYSSA A. OUDIN,)
)
 Appellant.)

WD74885

Clay County

Before Division Two Judges: Thomas H. Newton, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

Alyssa Oudin appeals her convictions for first-degree assault, pursuant to section 565.050.1, and armed criminal action, pursuant to section 571.015, imposed following a jury trial, and for which she was sentenced to consecutive terms of twelve and three years' imprisonment, respectively. Oudin argues that the trial court plainly erred in submitting an outdated version of the MAI-CR defense-of-others instruction

AFFIRMED.

Division Two holds:

1. A defendant waives a claim of instructional error related to a defect in an instruction submitted by the State if, during the instructions conference, the defendant submitted an instruction containing the same defect, even if the proffered instruction was later refused by the trial court in favor of the State's version.
2. Here, both the State's and Oudin's proffered instructions on defense-of-others were erroneously patterned on MAI-CR 3d 306.08, rather than on MAI-CR 3d 306.08A, as was required by the Notes on Use. The trial court rejected Oudin's version and provided the State's version to the jury. On appeal, Oudin complains that the jury was improperly instructed on defense-of-others because the instruction was based on MAI-CR 3d 306.08, instead of MAI-CR 3d 306.08A. But because Oudin's proffered

defense-of-others instruction contained the same defect about which she complains on appeal, her claim of instructional error is waived.

Opinion by: Karen King Mitchell, Judge

July 23, 2013

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